



BOARD OF EQUALIZATION

**CUSTOMER SERVICES AND ADMINISTRATIVE  
EFFICIENCY COMMITTEE MEETING MINUTES**

HONORABLE BILL LEONARD, COMMITTEE CHAIR  
450 N STREET, SACRAMENTO

MAY 24, 2005, 9:30 A.M.

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**ACTION ITEMS**

**Agenda Item No: 1**

**Title: Petition To Amend The Rules Of Practice – Recommended Policies Regarding (1) Additional Time For Oral Hearings; (2) Board Agendas; and (3) Board Opinions**

**Issue/Topic:**

Based on the Board's March 22, 2005 discussion of the issues raised by Vice Chairman Claude Parrish's petition to amend the Rules of Practice, staff provided the Board with the following policy recommendations:

- With the approval of the Chair, the Chief of Board Proceedings may grant requests for additional time, generally not more than an additional 10 minutes per party, to present complex cases. Staff will inform parties that they may request additional time.
- The Board Proceedings Division will schedule matters on the agenda for either a morning or afternoon session, generally scheduling oral hearings during the morning session and public hearings and administrative matters during the afternoon session.
- For Business Taxes and Franchise Tax Board appeals, the Appeals Division will provide a brief analysis and recommendation regarding whether the Board's decision should be published, either for every decision or only when publication is recommended.

**Committee Discussion:**

Written public comment was submitted by the State and Local Tax Committee of the Tax Section of the California State Bar, Jeffrey Vesley of Pillsbury Winthrop Shaw Pittman, and Joseph Vinatieri of Bewley Lasseben and Miller (copies attached).

The Board heard public comment from Mr. Joseph Vinatieri of Bewley Lasseben and Miller who stated that he agreed with staff's first and second recommendations. With regard to publishing opinions, Mr. Vinatieri recommended modifying Rules of Court 976 and 978 to make them applicable to the situation at the Board. He clarified, with respect to Rule 978, that the term "any person" would be modified to refer only to the taxpayer, staff and the Board Members.

Board Chairman John Chiang asked for clarification of the process to be used for seeking additional time. Senior Tax Counsel Ani Kindall explained that the Board Proceedings Division would be using the current procedure, which is as follows:

1. The taxpayer provides the Chief of Board Proceedings with written justification for the request.
2. The Chief consults with the Appeals Division regarding the complexity of the case.
3. The Chief takes both the taxpayer's justification and the Appeal Division's position to the Chair with a recommendation for the Chair's approval or denial.

Ms. Kindall explained that the ability to request additional time is not well known and that the Board Proceedings Division will be informing taxpayers that they can request additional time for complex cases.

Acting Board Member Betty Yee asked if there was a time deadline for making a request for additional time. Committee Chair Bill Leonard responded that the staff recommendation gives flexibility for the Chair to grant even a late request if the request is late for good reason and if the Board's schedule can accommodate the request. Those who have complex cases improve their chances of getting additional time if the request is made early. It was clarified that Board Members may also request additional time.

Board Vice Chairman Claude Parrish expressed his approval of the staff recommendations and his hope that every Board Member will be comfortable with what the Board decides. He also indicated that this was a work in progress.

Mr. Leonard asked how the staff recommendation compares with Mr. Vinatieri's recommendation of adopting the criteria in Rule 976(c). Acting Assistant Chief Counsel Selvi Stanislaus stated that staff currently makes a recommendation only when publication is recommended, not in every case. Mr. Leonard indicated that that approach appears to be consistent with Rule 976. Mr. Vinatieri clarified that he was not asking for a recommendation in every case.

Ms. Yee asked for clarification of recommendation Number 2. Ms. Kindall stated that we would return to the practice of having a morning and an afternoon session and that, to the degree possible, oral hearings would be scheduled in the morning and public hearings and administrative matters would be scheduled in the afternoon. The practice of scheduling cases by dollar value is not part of the staff recommendation.

Ms. Yee stated that she is comfortable with the staff recommendations. She indicated that she would like to proceed by adopting them as policy today and have actual amendment to the Rules be part of a more comprehensive look at the Rules of Practice with the idea of adopting certain Rules of Court that may be appropriate for the Board.

Deputy Controller Marcy Jo Mandel stated that the process of amending the Rules of Practice should include interested parties meetings.

With regard to staff recommendation Number 3, Ms. Mandel suggested that if the staff provides an analysis regarding whether the decision meets the criteria for publication an actual recommendation may not be needed.

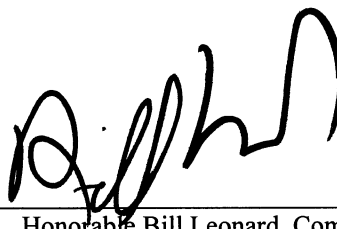
Mr. Parrish suggested that perhaps the decision to publish an opinion could be made at a meeting after the case is heard. Ms. Mandel explained that the statutory requirements for Franchise Tax Board appeals create technical problems for such an approach.

Ms. Stanislaus said that when Appeals sends the hearing summary it will include reasons why a case should be a formal opinion and that the Appeals Division would follow the criteria in Rule 976(c). It was clarified that nothing prevents a Board Member from recommending publication.

### **Committee Action/Recommendation/Direction:**

Mr. Parrish moved, seconded by Ms. Yee, that the Board adopt the staff's recommendations as policy today and have the actual amendments be part of a more comprehensive review of the Rules of Practice. Motion carried on a 5-0 vote.

Approved: \_\_\_\_\_



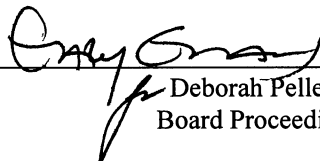
Honorable Bill Leonard, Committee Chair



Ramon J. Hirsig, Executive Director

BOARD APPROVED

At the May 25, 2005 Board Meeting



Deborah Pellegrini, Chief  
Board Proceedings Division